

United States Court of Appeals For the First Circuit

No. 05-1850

99-322 (PG)

UNITED STATES,

Appellee,

v.

VICTOR LOPEZ-HERNANDEZ,

Defendant, Appellant.

Before

Boudin, Chief Judge,
Torruella and Howard, Circuit Judges.

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U.S. DISTRICT COURT
SAN JUAN, P.R.

JUDGMENT

Entered: April 3, 2006

Appellant appeals from the sentence imposed on April 25, 2005, at a resentencing hearing ordered by this court in its judgment dated September 10, 2003. We agree with both parties that the resentencing court erred as a matter of law in viewing itself as unable to exercise its discretion in determining whether to impose the federal sentence to run concurrent with or consecutive to a Puerto Rico sentence involving the same offense conduct.

The sentence is vacated and the case is remanded to the district court for resentencing by a different judge, in conformity with our September 10, 2003 judgment.

It is so ordered.

By the Court:
Richard Cushing Donovan, Clerk.

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FIRST CIRCUIT COURT OF APPEALS
BOSTON, MA

By: [Signature] Date: 4/3/06

By: MARGARET CARTER
Chief Deputy Clerk.

[certified copies: Honorable Juan M. Perez-Gimenez, Frances DeMoran, Clerk United States District Court for the district of Puerto Rico]

[cc: Maria Soledad Ramirez-Becerra, Esq., Francisco A. Ojeda-Diez, Esq., H.S. Garcia, USA, Timothy S. Vasquez, AUSA, Nelson J. Perez-Sosa, AUSA, Thomas F. Klumper, AUSA]